REMARKS

In the Office Action, the Examiner rejected claims 1—2, 5—9, 11—14, 32, 36, 38—39, and 41 under 35 USC 102 as anticipated by Marino (USP 6202367) or Chiodo (USP 5575130) and under 35 USC 103 as unpatentable over Chiodo in view of Harding (USP 5256006). Claims 3—4, 10, 15—16, 17—20, 33—35, 37, 40 and 42 have been withdrawn. The Examiner also objected to the drawings. Applicants have amended claims 1, 11, 32 and 36 and submitted formal drawings herewith. In view of the foregoing amendments, Applicants request reconsideration and withdrawal of the Examiner's rejections and objections.

Drawing Objections:

The Examiner asserts at page 2 that the "'height of the edge board channel is greater that the height of the edging board' claim 11, line 3 must be shown or the features(s) canceled from the claims(s)." Applicant respectfully submits that this feature appears in the drawings as filed and directs the Examiner to Fig. 8 and to page 11, lines 3—6, which states " The height H_K of the trough 130 plus the height H_F of the channel 50 is dimensioned such that an upper end 230 of the edging board 200 tends not to contact an upper end 132 of the trough 130. That is the height H_J of the edging board channel 90 is preferably greater than the height H_M of the edging board 200." In view of the foregoing, Applicants submit that the Examiner's objections are overcome.

Claim Rejections:

Applicants have review Marino, Chiodo and Harding in detail and respectfully submit that neither teach or suggest, alone or in combination, all of the limitations of independent claims 1, 32 and 36 as amended above. Specifically, Marino , Chiodo and Harding fail to teach or suggest:

a stake member ... an upper region having a first channel ... , wherein the

upper region includes at least two vertical tabs extending vertically from the intermediate region in a direction opposite of the lower region of the stake member and forming opposing walls of the first channel; and

a hammer cap comprising a first region having a striking surface and a second region having vertical legs extend from the first region and forming opposing walls of a second channel ~~formed therein~~ for receiving a second portion of the landscape edging board, wherein the hammer cap being operably couplable with the stake member wherein the first and second channels combine to form an edging board channel having four walls that extend about the landscape edging board when received therein, the edging board channel being greater in height than the landscape edging board

as claimed in claim 1;

cap having a second recess, the cap being operably coupled to the stake wherein the first and second recess coextensively form a channel having four walls that extend about four sides of a landscape board when received therein and wherein the height of the channel is greater than the height of the landscape board..

as claimed in claim 32; or

a hammer cap having vertical walls defining a second channel, the hammer cap being couplable with the upper region wherein the first and second channels combine to form a board channel having four walls extending about the landscape edging board when received therein.

as claimed in claim 36.

Marino simply does not teach the stake and hammer cap with the channels configured as claimed or the difference in height between. Chiodo does not teach a stake and hammer cap system. The cap relied on in Harding to meet the claim limitation sits on the board such that there is no teaching of a gap or channel having a height dimension greater than the height of the board. Moreover, Harding effectively teaches away from this limitation and, thus, can not be used to establish a prima facie case of obviousness.

As illustrated in the application, the purpose of this limitation is as follows:

> The height H_K of the trough 130 plus the height H_F of the channel 50 is dimensioned such that an upper end 230 of the edging board 200 tends not to contact an upper end 132 of the trough 130. That is the height H_J of the edging board channel 90 is preferably greater than the height H_M of the edging board 200." Therefore, the upper end 230 of the edging board 200 tends not to contact the upper end 132 of the trough 130 of the hammer cap 100. The hammer cap tends to prevent the force used to drive the stake into the ground from being transferred to the edging board. This allows the user to apply downward force to the hammer cap 100 without damaging the edging board 200. As with the dimensions of the upper region of the stake, the dimensions of the hammer cap 100 may be varied to accommodate varying sizes of edging boards 200. page 11, lines 3—12,

Accordingly, Applicants submit that claims 1, 32, and 36, as well as claims 2, 5—9, 11—14, 38—39, and 41 by virtue of their dependence on claims 1 and 36, meet the requirements for patentability under 35 USC 102 and 103. Applicants further submit that claims 1, 32 and 36 are generic to unelected species and that withdrawn dependent claims 3—4, 10, 15—16, 33—35, 37, 40 and 42 are allowable as well.

Conclusion

The Applicant's respectfully submit that claims 1—16, 32—35, and 36—42 are in condition for allowance. Accordingly, reconsideration and allowance of the application is requested. If the Examiner has any questions or comments, the Examiner is invited to call the undersigned at (949) 567-6700.

Respectfully submitted,
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Dated: May 31, 2007

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